

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 10-11311

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

and

MASSACHUSETTS BAY
COMMUTER RAILROAD
COMPANY, L.L.C.

Defendants.

COMPLAINT

Plaintiff, the United States of America, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

INTRODUCTION

1. This is a civil action brought against the Massachusetts Bay Transportation Authority ("MBTA") and the Massachusetts Bay Commuter Railroad Company, LLC ("MBCR") pursuant to Sections 113(a)(1) and 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(1) and 7413(b), seeking injunctive relief and civil penalties.

2. The claims arise from MBTA's and MBCR's violations of the federally enforceable diesel locomotive idling regulation found at 310 Code of Massachusetts Regulations

("CMR") 7.11(2) ("the Massachusetts locomotive idling regulation"). The Massachusetts locomotive idling regulation prohibits the unnecessary foreseeable idling of a diesel locomotive for a continuous period of time longer than thirty (30) minutes.

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); 28 U.S.C. § 1391; and 28 U.S.C. § 1395.

5. Notice of commencement of this action has been given to the Massachusetts Department of Environmental Protection ("DEP") pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANTS

6. MBTA was created by statute in 1964 as "a body politic and corporate and a political subdivision" of the Commonwealth of Massachusetts. Following substantial changes to its governance and financing, MBTA is currently governed by a seven-member Board of Directors appointed by the Governor of Massachusetts, with the state Secretary of Transportation serving as Chairman of the Board. MBTA's principal office is located at 10 Park Plaza, Boston, Massachusetts 02116.

7. MBCR is a Delaware limited liability company registered in Massachusetts since 2002. MBCR's principal office is located at 89 South Street 8th Floor, Boston, Massachusetts 02111.

8. MBTA is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 310 CMR 7.00.

9. MBCR is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 310 CMR 7.00.

CLAIM FOR RELIEF: EXCESSIVE DIESEL LOCOMOTIVE IDLING

10. Sections 113(a)(1) and 113(b) of the CAA, 42 U.S.C. 7413(a)(1) and (b), provide for injunctive relief, and the assessment of civil penalties, for violations of any provision of an applicable state implementation plan or permit. The provisions of the Massachusetts locomotive idling regulation at 310 CMR 7.11(2) are part of a federally enforceable state implementation plan approved by the EPA under Section 110 of the CAA, 42 U.S.C. § 7410.

11. The Massachusetts locomotive idling regulation at 310 CMR 7.11(2) provides in relevant part as follows:

(2) Diesel Trains

(b) No person shall cause, suffer, allow, or permit the unnecessary foreseeable idling of a diesel locomotive for a continuous period of time longer than 30 minutes. [This regulation] shall not apply to diesel locomotives being serviced provided that idling is essential to the proper repair of said locomotive and that such idling does not cause or contribute to a condition of air pollution.

12. MBTA owns a fleet of diesel-powered locomotives used to provide commuter rail service in the greater Boston area.

13. MBCR manages and operates the commuter rail system under contract with MBTA.

14. In November 2007, January 2008, and April 2008, EPA issued CAA Reporting Requirements to MBTA pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), to obtain information regarding commuter rail operations and locomotive idling.

15. The information provided by MBTA and MBCR in response to EPA's Reporting Requirements demonstrates that on numerous occasions beginning in at least January 2008, if not

earlier, until the present, MBTA and MBCR have caused, suffered, allowed, or permitted the unnecessary foreseeable idling of a diesel powered locomotive for a continuous period of time longer than thirty minutes, and not in accordance with the exception listed in 310 CMR § 7.11(2)(b).

16. Therefore, MBTA and MBCR violated 310 CMR 7.11(2)(b), a federally enforceable applicable state implementation plan provision.

17. On November 24, 2008, EPA issued MBTA and MBCR a Notice of Violation (“NOV”) under the authority of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), concerning the violations alleged in this Complaint. This NOV was also provided to the Massachusetts DEP.

18. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and the DCIA’s implementing regulations at 40 C.F.R. Part 19, MBTA and MBCR are each liable for civil penalties of up to \$32,500 per day for each locomotive idling violation that has occurred after March 15, 2004, and for up to \$37,500 per day for each locomotive violation that has occurred after January 12, 2009.

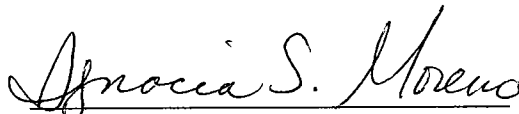
RELIEF SOUGHT

Wherefore, Plaintiff, the United States of America, respectfully requests that the Court grant the following relief:

1. Permanently enjoin MBTA and MBCR from operating diesel locomotives in violation of the Massachusetts locomotive idling regulation;
2. Assess MBTA and MBCR civil penalties for each violation of the Massachusetts locomotive idling regulation; and


3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,



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